

Rules of the South Florida Water Management District

**GENERAL AND
PROCEDURAL
Chapter 40E-1, F.A.C.**



Effective 11-08-99

CHAPTER 40E-1 — GENERAL AND PROCEDURAL

(Formerly 16CA-1; 16K-1)

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- 40E-1.002 Scope of Jurisdictions. (Repealed)
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40E-1.001 — Policy, Objectives and Implementation Dates.

Specific Authority Chapter 25270, Laws of Florida, as Amended; 373.113 FS.
Law Implemented 373.016, 373.113, 373.149 FS.
History — New 3-2-74, Amended 1-12-77, Formerly 16K-1.01, Repealed 9-3-81,
Formerly 40E-1.01.

40E-1.002 — Scope of Jurisdictions.
Specific Authority 373.044, 373.113 FS.
Law Implemented 373.085, 373.023, 373.069 FS.
History — New 3-2-74, Formerly 16K-1.02, Repealed 9-3-81, Formerly 40E-1.02.

40E-1.003 — Powers and Duties.
Specific Authority Chapter 25270, Laws of Florida, as amended, 373.044,
373.113 FS.
Law Implemented Chapter 25270, Laws of Florida, as amended, 373.086,
373.083(1), 373.103(2), (3), (4), (7) FS.
History — New 3-2-74, Formerly 16K-1.03, Repealed 11-18-75, Formerly 40E-
1.03.

40E-1.004 — Appropriation of Funds.
Specific Authority 373.113 FS.
Law Implemented 373.501 FS.
History — New 3-2-74, Formerly 16K-1.04, Repealed 9-3-81, Formerly 40E-1.04.

40E-1.005 — Definitions.
Specific Authority 373.044, 373.113 FS.
Law Implemented 373.086, 373.106, 373.113, Ch. 373 (Parts II, III, IV) FS.
History — New 3-2-74, Amended 7-20-74, 11-18-75, Formerly 16K-1.05,
Repealed 9-3-81, Formerly 40E-1.05.

40E-1.006 — Permits Required.
Specific Authority 373.044, 373.113 FS.
Law Implemented 373.085, Ch. 373 (Parts II, III, IV) FS.
History — New 3-2-74, Amended 11-18-75, Formerly 16K-1.06, Repealed 9-3-
81, Formerly 40E-1.06.

40E-1.0061 — Bond.
Specific Authority 373.044, 373.113 FS.
Law Implemented 373.085, 373.219, 373.413, 373.416 FS.
History — New 12-20-74, Formerly 16K-1.061, Repealed 9-3-81, Formerly 40E-
1.061.

40E-1.0062 — Reapplying With Permits.
Specific Authority 373.044, 373.113 FS.
Law Implemented 373.085, 373.219, 373.413, 373.416 FS.
History — New 12-20-74, Repealed 5-12-76, Formerly 16K-1.062, Formerly 40E-
1.062.

40E-1.007 — Power to Enforce.

Specific Authority 373.113 FS.

Law Implemented 373.603 FS.

History — New 3-2-74, Repealed 11-18-75, Formerly 16K-1.07, Formerly 40E-1.07.

40E-1.008 — General Permit Procedure.

Specific Authority 120.53(1), 373.113 FS.

Law Implemented 120.57, 373.106, 373.109, 373.413, 373.416, 373.426 FS.

History — New 3-2-74, Amended 12-20-74, 11-18-75, Formerly 16K-1.08, Repealed 9-3-81, Formerly 40E-1.08.

40E-1.009 — Filing of Citizen Objection or Complaints.

Specific Authority 373.113 FS.

Law Implemented 373.219(2), 373.229(2) FS.

History — New 3-2-74, Formerly 16K-1.09, Repealed 9-3-81, Formerly 40E-1.09.

40E-1.010 — Administrative Enforcement Procedures.

Specific Authority 373.113 FS.

Law Implemented 373.119 FS.

History — New 3-2-74, Repealed 11-18-75, Formerly 16K-1.10, Formerly 40E-1.10.

40E-1.011 — Quasi-Judicial Hearings Before the Board.

Specific Authority 120.53(1), 373.113 FS.

Law Implemented 120.53, 120.57, 120.58(1), 373.126 FS.

History — New 3-2-74, Revised 12-20-74, Amended 11-18-75, Formerly 16K-1.11, Repealed 9-3-81, Formerly 40E-1.11.

40E-1.0111 — Parties to Proceedings.

Specific Authority 120.53(1) FS.

Law Implemented 120.53(1) FS.

History — New 12-20-74, Amended 11-18-75, Formerly 16K-1.111, Repealed 9-3-81, Formerly 40E-1.111.

40E-1.0112 — Pleadings.

Specific Authority 120.53(1)(b) FS.

Law Implemented 120.53(1)(b) FS.

History — New 12-20-74, Amended 11-18-75, Formerly 16K-1.112, Repealed 9-3-81, Formerly 40E-1.112.

40E-1.0113 — Witness Fees.

Specific Authority 373.113 FS.

Law Implemented 373.126(3) FS.

History — New 12-20-74, Formerly 16K-1.113, Repealed 11-18-75, Formerly 40E-1.113.

40E-1.012 — Request for Hearing.

Specific Authority 120.53, 373.113 FS.

Law Implemented 120.53, 120.57, 120.60 FS.

History — New 3-2-74, Amended 12-20-74, Formerly 16K-1.12, Repealed 9-3-81, Formerly 40E-1.12.

40E-1.013 — Petitions for Declaratory Statements.

Specific Authority 120.56(5) FS.

Law Implemented 120.56(5) FS.

History — New 12-20-74, Amended 11-18-75, Formerly 16K-1.13, Repealed 9-3-81, Formerly 40E-1.13.

40E-1.014 — Administrative Determination of Validity of Regulation.

Specific Authority 120.53 FS.

Law Implemented 120.56(2) FS.

History — New 12-20-74, Formerly 16K-1.14, Repealed 11-18-75, Formerly 40E-1.14.

40E-1.015 — Procedure for Adoption of Rules.

Specific Authority 120.53(1), 373.113 FS.

Law Implemented 120.53(1), 120.54 FS.

History — New 12-20-74, Amended 11-18-75, Formerly 16K-1.15, Repealed 9-3-81, Formerly 40E-1.15.

40E-1.016 — Description of Organization.

Specific Authority 120.53(1)(a) FS.

Law Implemented 120.53(1)(a) FS.

History — New 12-20-74, Formerly 16K-1.16, Repealed 9-3-81, Formerly 40E-1.16.

40E-1.017 — Agenda and Scheduling of Meetings and Workshops.

Specific Authority 120.53(1)(d) FS.

Law Implemented 120.53(1)(d) FS.

History — New 12-20-74, Formerly 16K-1.17, Repealed 9-3-81, Formerly 40E-1.17.

40E-1.018 — Procedures Under Consultants' Competitive Negotiations Act.

Specific Authority 287.055(3)(d) FS.

Law Implemented 287.055 FS.

History — New 12-20-74, Formerly 16K-1.18, Repealed 9-3-81, Formerly 40E-1.18.

40E-1.090 — Forms and Instructions.

Specific Authority 373.044, 373.113, 120.53(1)(b) FS.

Law Implemented 373.084, 373.106, 373.229, 373.413(2), 120.52(14), 120.53(1)(b) FS.

History — New 4-11-78, Formerly 16K-1.90, Repealed 9-3-81, Formerly 40E-1.90.

PART I GENERAL

40E-1.100 — Uniform Rules of Procedure and Statement of District Organization and Operation.

(1) Procedures governing the District's proceedings under Chapter 120, F.S., including rulemaking, meetings and workshops, conducting proceedings by communications media technology, declaratory statements, decisions determining substantial interests, licensing, and variances and waivers, are contained in Title 28, F.A.C., Uniform Rules of Procedure. Exceptions to the Uniform Rules of Procedure were granted by the Administration Commission and are set forth in Chapter 40E-0, F.A.C. Each exception is also delineated within the appropriate substantive rules in Chapters 40E-1, 40E-3, 40E-4, and 40E-21, F.A.C.

(2) General information about the District is contained in the SFWMD "Statement of District Organization and Operation", a non-rule document published pursuant to Section 120.54(5), F.S., and Uniform Rules of Procedure Section 28-101, F.A.C. The Statement of District Organization and Operation provides information on the District's mission, statutory authority, delegation of authority and duties pursuant to Chapter 373, F.S.; governing board and internal organization and functions; public assistance programs and opportunities, identification of the agency clerk and the official reporter; and how to obtain District documents and publications, including district statutes, rules, and permit applications or authorizations; and document filing procedures.

Specific Authority 120.54(5) FS.

Law Implemented 120.54(5) FS.

History — New 7-2-98.

40E-1.101 — General.

Specific Authority 373.044, 373.113 FS.

Law Implemented 120.53(1), 373.044, 373.113 FS.

History — New 9-3-81, Formerly 16K-1.01, Repealed 7-2-98.

40E-1.102 — Definitions.

Specific Authority 120.54(10), 373.044, 373.113 FS.

Law Implemented 120.53(1)(a), 373.019, Ch. 373 (Parts I, II, IV) FS.

History — New 9-3-81, Formerly 16K-1.05, 16K-1.11(1), Amended 10-3-95, Repealed 7-2-98.

40E-1.103 — The District.

Specific Authority 120.53(1), 373.044, 373.113 FS.

Law Implemented 120.053(1), 373.113 FS.

History — New 9-3-81, Formerly 16K-1.01, 16K-1.02, Amended 5-11-93, Repealed 7-2-98.

40E-1.104 — The Governing Board.

Specific Authority 120.53(1), 373.044, 373.113 FS.

Law Implemented 120.53(1)(a), 373.073, 373.103 Ch. 373, Parts I, II, IV, V, VI FS.

History — New 9-3-81, Amended 5-11-91, Repealed 7-2-98.

40E-1.105 — General Description of District Organization and Operations.

Specific Authority 120.53(1), 373.044, 373.113 FS.

Law Implemented 120.53(1)(a), 373.079(4), (5), 373.103 FS.

History — New 9-3-81, Formerly 16K-1.16(2), Amended 5-11-93, 4-16-95, Repealed 7-2-98.

40E-1.106 — Post-Employment Restrictions.

(1) For a period of two years following separation of employment, or expiration of term of office, no former specified employee or official shall personally represent another person or entity for compensation before the District in connection with any matter where the person participated personally and substantially, within their last two years of employment or service on the board, and where the person has actual knowledge of the matter.

(2) Such representation is prohibited unless the Executive Director consents to such representation.

(3) This section shall apply to all specified employees hired after November 1, 1997; all employees promoted to a position which is included in the definition of specified employee after November 1, 1997; and all officials appointed after November 1, 1997.

(4) This section does not apply to former specified employees or officials working for another government agency.

(5) For the purposes of this rule, the following definitions shall apply:

(a) "Matter" shall include any judicial or other proceeding, application, request for ruling or other determination, contract, claim, controversy or investigation.

(b) "Official" shall mean any member of the Basin Board(s) or Governing Board of the South Florida Water Management District.

(c) "Represent" or "Representation" shall mean actual physical attendance on behalf of an individual or entity, for compensation, at a proceeding before the South Florida Water Management District or personal communications made with any officials, employees, or advisory board members of the South Florida Water Management District in their official capacity, on behalf of an individual or entity, including the filing of documents or the writing of letters on behalf of said individual or entity.

(d) "Specified employee" shall mean any management position within the Executive Council of the District.

Specific Authority 112.311, 112.313(13), 373.044 FS.

Law Implemented 112.311, 112.313(13) FS.
History — New 10-22-97.

40E-1.1065 — Misuse of Public Position.

(1) No District public official, Advisory Board Member or employee shall initiate use of their official District title or District position to influence voters on pending issues unless the Governing Board has adopted an official position on the issue. District public officials, advisory board members and employees may provide factual information based upon District policies, databases, research or other District information sources upon request from the public, to support informing the public with accurate, current, relevant information.

(2) The Chairpersons of the Governing Board and Big Cypress Basin Board serve as elected spokespersons for these bodies and must use the privilege and trust placed in the chairperson position to promote the policies and adopted positions of the Governing Board and the Big Cypress Basin Board, and must not use the position of Chairperson to represent personal positions or interests.

(3) The preceding policies shall not infringe in any way upon the rights of District public officials, advisory board members or employees as responsible citizens to take a personal position on any issues outside of the direct bounds of their responsibilities as District public officials, advisory board members or employees of the District.

(4) Any District public official, advisory board member or employee may comply with this rule by including a disclaimer in any written or oral statements which could reasonably be interpreted to influence voters. The disclaimer should disclose that the statements are not those of the District, but rather that they are statements of the person as a private citizen.

(5) For the purposes of this rule, the following definitions shall apply:

(a) "Advisory Board" shall mean any advisory board created and appointed by the South Florida Water Management District Governing Board or Basin Board whose sole or primary responsibility is to recommend action or give advice to the South Florida Water Management District Governing Board or Basin Board.

(b) "District public official" shall mean any member of the Basin Board(s) or Governing Board of the South Florida Water Management District.

Specific Authority 112.311, 112.313(6), 373.044 FS.

Law Implemented 112.311, 112.313(6) FS.

History — New 10-22-97.

40E-1.107 — Basins Within the District.

Specific Authority 120.53(1), 373.044, 373.113 FS.

Law Implemented 373.069(3)(e), 373.0693(9), (10) FS.

History — New 9-3-81, Amended 5-11-93, Repealed 7-2-98.

40E-1.121 — General Information Concerning the District.

Specific Authority 120.56(1), 373.044, 373.113 FS.

Law Implemented 120.53(1), 373.079, 373.113 FS.

History — New 9-3-81, Formerly 16K-1.16(5), (6), (8), Amended 5-11-93, Repealed 7-2-98.

40E-1.123 — Statutory Chapters and Rules.

Specific Authority 120.53, 373.044, 373.113 FS.

Law Implemented 120.53(1), (2), 373.113 FS.

History — New 9-3-81, Formerly 16K-1.01, 16K-1.02, 16K-1.16(1), (3), Amended 5-11-93, Repealed 7-2-98.

40E-1.125 — Public Information and Inspection of Records.

(1) For purposes of this section, "public records" are all records as defined in Chapters 119, 120, and 373, Florida Statutes. Unless exempt from public disclosure by law, District records can be inspected or copied either at the District's West Palm Beach Headquarters office, located at 3301 Gun Club Road, West Palm Beach, FL 33406 or any other District office where such records are maintained, during the hours specified in Rule 40E-1.121, F.A.C.

(2) Requests for public records may be submitted to any District office or department, or to the District Public Records Coordinator in writing at P.O. Box 24680, West Palm Beach, FL 33416, or by telephone at (407) 686-8800.

Requestors are encouraged to submit requests in writing to expedite accurate processing of their requests. Requests should be sufficiently detailed to identify the documents sought to be examined or copied. The District shall provide access to, and copies of, District records upon payment of fees prescribed by law. The District shall not be obligated to create or assemble a new record to accommodate any request for information.

(3) Standard legal or letter size copies of public records shall be furnished upon request for a fee of \$0.15 per page or \$0.20 for double-sided copies. The District shall waive the first five dollars (\$5.00) of costs incurred for all requests for standard size copies. Unless otherwise stated herein, all other copies of public records, including records which require special medium, shall be furnished upon payment of the actual cost of duplication.

(4) When the nature or volume of records requested to be examined or copied requires extensive use of District clerical or supervisory personnel, or extensive use of information technology resources, the District shall charge, in addition to the actual cost of duplication, a special service charge. The term "extensive use" shall mean a time period longer than 30 minutes required to locate the record, review the record for statutorily exempt information, and copy the requested material. This special service charge shall be based on the cost incurred for such extensive use of information technology resources or the labor most of the personnel providing the service that is actually incurred by the District or attributable to the District for the clerical or supervisory assistance required, or both. These charges shall not apply to the first 30 minutes of service provided. Information technology resources shall mean data processing hardware and software services, supplies, personnel, facility resources, maintenance and training. Prior to the assessment of any special services charge, the District shall notify the Requestor that the information does not appear to be readily

identifiable, possibly does not exist or will require additional time to review and copy. Upon agreement by the Requestor and payment of estimated charges, if any, the District will proceed to complete the request pursuant to Section (5) herein.

(5) The District shall determine which District personnel is appropriate to provide assistance in fulfilling a request. The requestor shall be required to pay any estimated special service charges, as determined by the District, prior to District personnel rendering such services. Payment for special services shall also be imposed where extensive use of District personnel or information technology is necessary to determine whether the public record exists or is exempt from public disclosure, including instances where such investigation reveals that the record either does not exist or is exempt from disclosure. The District will refund to the requestor any monies deposited with the District in excess of the actual costs incurred to fulfill a request, or, in the alternative, the requestor shall be required to remit additional monies to pay for any costs in excess of the monies deposited with the District. In the event the requestor fails to remit additional monies to cover costs in excess of the monies deposited by the requestor, the District may withhold releasing any public records produced pursuant to that request until those amounts are paid in full.

(6) All rules, forms and instructions used by the District in dealing with the public are available without cost. Rules relating to personnel matters may be obtained by contacting the District's Human Resources Division at the District's West Palm Beach Headquarters office and are also available without cost.

(7) The District may provide remote electronic access to public records determined by the District to be of interest to the general public. If remote electronic access is provided to the public, such service shall be performed pursuant to a contract with users and shall be provided free of charge.

(8) Copies of District records produced solely for general distribution may be furnished at no cost to the public; provided, however, that pre-printed copies of such records are available.

(9) Requests for District public records shall be provided to governmental and educational institutions at no cost.

Specific Authority 119.01, 119.085, 120.53, 282.303(1), 286.011, 373.044, 373.113 FS.

Law Implemented 119.01, 119.07, 119.021, 119.085, 120.53, 286.011, 373.044, 373.113 FS.

History — New 9-3-81, Formerly 16K-1.16(4), (7), Amended 5-11-93, 9-19-95.

40E-1.132 — District Clerk and Official Reporter.

Specific Authority 120.53, 373.044, 373.113 FS.

Law Implemented 120.52(9), 120.53(1), (2)(b), (c), (3), (4), Final 120.54(10), 120.59(1), 373.171 FS.

History — New 9-3-81, Amended 5-11-93, Repealed 7-2-98.

40E-1.133 — Public Access.

Specific Authority 119.07, 120.53, 373.044, 373.113 FS.

Law Implemented 119.07, 119.08, 120.53(3), 373.113 FS.
History — New 9-3-81, Formerly 16K-1.16(4), Transferred to 40E-1.138.

40E-1.1335 — Final Order Indexing.
Specific Authority 120.533 FS.
Law Implemented 120.53,(2) — (4), 120.533, 373.044, 373.113 FS.
History — New 5-11-93, Repealed 7-2-98.

40E-1.134 — Final Orders Required to be Indexed.
Specific Authority 120.53, 120.533, 373.044, 373.113 FS.
Law Implemented 120.53(2)(a)3., (d) FS.
History — New 5-11-93, Repealed 7-2-98.

40E-1.135 — Listing of Final Orders.
Specific Authority 120.53, 120.533 FS.
Law Implemented 120.53(2)(a)4., 120.533 FS.
History — New 5-11-93, Repealed 7-2-98.

40E-1.136 — Numbering of Final Orders.
Specific Authority 120.533 FS.
Law Implemented 120.53(2) — (4) FS.
History — New 5-11-93, Repealed 7-2-98.

40E-1.137 — Maintenance of Final Orders.
Specific Authority 119.041, 120.533(1)(j) FS.
Law Implemented 119.041, 120.533 FS.
History — New 5-11-93, Repealed 7-2-98.

40E-1.138 — Public Access.
Specific Authority 119.07, 120.53, 373.044, 373.113 FS.
Law Implemented 119.07, 119.08, 120.53(3), 373.113 FS.
History — New 9-3-81, Formerly 16K-1.16(4), 40E-1.133, Repealed 7-2-98.

40E-1.139 — Complaints under the Americans with Disabilities Act.
(1) It is the policy of the District to provide an equal opportunity for access to District services, programs, activities, and facilities which are held open to the public by handicapped and disabled persons in keeping with Title III of the Americans With Disabilities Act of 1990, 42 USC 12101, et seq., and the regulations which implement the Act, 28 CFR 35.
(2) Interested persons may obtain information concerning handicapped and disabled accessibility to the District's services, activities, programs, and facilities which are held open to the public by contacting the facilities manager.
(3) Any affected person may file a complaint alleging discrimination on the basis of handicapped or disabled inaccessibility of District services programs, activities and facilities which are held open to the public.

- (a) Complaints shall be filed with the facilities manager and shall specify to the best of the complainant's knowledge, the location and nature of the conduct or circumstances complained of;
 - (b) The complaint must be signed by the complainant or authorized representative and contain an address or telephone number where the complainant can be reached;
 - (c) The District shall promptly investigate the complaint and may require the complainant to furnish any additional information reasonably necessary to aid investigating the complaint;
 - (d) The District shall promptly provide to the Complainant a written decision which documents why the decision is consistent with the provisions of the Americans With Disabilities Act and the regulations which implement the Act.
- (4) The complaint procedure established by this subsection is intended to provide a prompt informal method of dispute resolution. Failure to file a complaint pursuant to this subsection will not preclude an affected person from following other remedies which may be available under state and federal law. A District decision regarding a complaint shall not be considered an agency action pursuant to Chapter 120, Florida Statutes.
- Specific Authority 120.53(1), 373.044, 373.113 FS., 28 CFR 35.106, 35.107
Law Implemented 120.53, 286.26, 373.083 FS. CFR 35.106, 35.107 FS.
History — New 5-11-93.

PART II MEETINGS, HEARINGS AND WORKSHOPS

40E-1.200 — Procedures for Agendas and Scheduling of Meetings and Workshops.

The District's procedures for agendas and scheduling of meetings and workshops, including communications by media technology, are set forth in the Uniform Rules of Procedure, Chapters 28-102 and 28-109, F.A.C.

Specific Authority 120.54(5) FS.
Law Implemented 120.54(5) FS.
History — New 7-2-98.

40E-1.201 — Notice of Meeting or Workshop and Telecommunications.

Specific Authority 120.53(6), 373.044, 373.113 FS.
Law Implemented 120.52(5), 120.53, 120.53(1)(d), (6), 373.079 FS.
History — New 9-3-81, Formerly 16K-1.17(1), (8), Amended 5-11-93, Repealed 7-2-98.

40E-1.203 — Agenda of Public Meetings and Workshops.

Specific Authority 120.53, 373.044, 373.113 FS.
Law Implemented 120.53(1)(d), 373.113 FS.
History — New 9-3-81, Formerly 16K-1.17(2) — (6), (8)(a), (9), Amended 1-31-89, 5-11-93, Repealed 7-2-98.

40E-1.207 — Emergency Meetings.

Specific Authority 373.044, 373.113 FS.

Law Implemented 120.53(1)(d) FS.

History — New 9-3-81, Formerly 16K-1.17(7), Repealed 7-2-98.

40E-1.208 — Procedure for Abstaining from Voting Conflicts of Interest.

(1) No Board member shall vote in his or her official capacity upon any matter which:

(a) would inure to the member's special private gain;

(b) the member knows would inure to the special private gain of any principal by whom the member is retained;

(c) the member knows would inure to the parent organization or subsidiary of a corporate principal by which the member is retained, other than an agency as defined in Section 112.312(2), Florida Statutes, or;

(d) the member knows would inure to the special private gain of a relative, as defined in Section 112.3143(1)(b), Florida Statutes, or business associates, as defined in Section 112.312(4), Florida Statutes, of the member.

(2) Prior to a vote being taken on a matter delineated in subsection (1), the member shall publicly state at the Board meeting the nature of the interest in the matter from which the member is abstaining from voting and this announcement shall appear in the minutes. The Secretary of the Board, in conjunction with Office of Counsel, shall prepare the appropriate memorandum of voting conflict as designated by the Florida Commission on Ethics which shall then be signed by the Board member, filed with the Board Secretary and incorporated into the minutes of the meeting with 15 days of the meeting.

(3) No member shall participate in any matter delineated in subsection (1), without first disclosing the nature of the member's interest in the matter as required by Section 112.3143(4), Florida Statutes. For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the member or at the member's direction.

Specific Authority 112.3143, 120.53(1), 373.044, 373.113 FS.

Law Implemented 120.53, 373.079 FS.

History — New 5-11-93.

PART III RULEMAKING PROCEEDINGS

40E-1.300 — Rulemaking Procedures.

The District's procedures for rulemaking are set forth in Section 120.54, F.S., and Uniform Rules of Procedure, Chapter 28-103, F.A.C.

Specific Authority 120.54(5) FS.

Law Implemented 120.54(5) FS.

History — New 7-2-98.

40E-1.301 — Commencement of Proceedings.

Specific Authority 120.53, 373.044, 373.113 FS.

Law Implemented 120.53(1), 373.113 FS.

History — New 9-3-81, Formerly 16K-1.15(1), (2), Amended 5-11-93, Repealed 7-2-98.

40E-1.303 — Notice of Proceeding and the Proposed Rules.
Specific Authority 120.53, 373.044, 373.113, 373.1725 FS.
Law Implemented 120.53(1), 120.54(1)(d) FS.
History — New 9-3-81, Amended 5-11-93, Repealed 7-2-98.

40E-1.307 — Content of Notice.
Specific Authority 120.53, 373.044, 373.113 FS.
Law Implemented 120.54(1), 373.113 FS.
History — New 9-3-81, Amended 5-11-93, Repealed 7-2-98.

40E-1.311 — Petitions to Initiate Rulemaking Proceedings.
Specific Authority 120.53, 373.044, 373.113 FS.
Law Implemented 120.54(5), 373.113 FS.
History — New 9-3-81, Amended 5-11-93, Repealed 7-2-98.

40E-1.313 — District Action on Petitions to Initiate Rulemaking Proceedings.
Specific Authority 120.53, 373.044, 373.113 FS.
Law Implemented 120.54(5), 373.113 FS.
History — New 9-3-81, Amended 5-11-93, Repealed 7-2-98.

40E-1.327 — Rulemaking Materials.
Specific Authority 120.53 FS.
Law Implemented 120.54, 373.113 FS.
History — New 9-3-81, Amended 5-11-93, Repealed 7-2-98.

40E-1.330 — Rulemaking Proceedings — No Hearing.
Specific Authority 120.53, 373.044, 373.113 FS.
Law Implemented 120.54(3), 373.113 FS.
History — New 9-3-81, Amended 5-11-93, Repealed 7-2-98.

40E-1.331 — Rulemaking Proceedings — Hearing.
Specific Authority 120.53, 373.044, 373.113 FS.
Law Implemented 120.54(3)(a), (6), 373.113 FS.
History — New 9-3-81, Amended 5-11-93, Repealed 7-2-98.

40E-1.335 — Incorporation by Reference.
Specific Authority 373.044, 373.113 FS.
Law Implemented 120.53, 120.54 FS.
History — New 9-3-81, Repealed 7-2-98.

40E-1.337 — Emergency Rule Adoption.
Specific Authority 120.53, 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.54(9), 373.113 FS.

History — New 9-3-81, Amended 5-11-93, Repealed 7-2-98.

PART IV DECLARATORY STATEMENTS

40E-1.400 — Procedures Regarding Declaratory Statements.

The District's procedures regarding declaratory statements issued pursuant to Section 120.565, F.S., are set forth in Uniform Rules of Procedure, Chapter 28-105, F.A.C.

Specific Authority 120.54(5) FS.

Law Implemented 120.54(5) FS.

History — New 7-2-98.

40E-1.401 — General.

Specific Authority 120.53, 373.044, 373.113 FS.

Law Implemented 120.565, 120.73, 373.113 FS.

History — New 9-3-81, Formerly 16K-1.13(1), Amended 5-11-93, Repealed 7-2-98.

40E-1.405 — Purpose and Use of Declaratory Statement.

Specific Authority 120.53, 373.044, 373.113 FS.

Law Implemented 120.565, 373.113 FS.

History — New 9-3-81, Amended 5-11-93, Repealed 7-2-98.

40E-1.407 — District Disposition.

Specific Authority 120.53, 373.044, 373.113 FS.

Law Implemented 120.565, 373.113 FS.

History — New 9-3-81, Formerly 16K-1.13(2), (3), Amended 5-11-93, Repealed 7-2-98.

PART V DECISIONS DETERMINING SUBSTANTIAL INTERESTS

Subpart A General Provisions

40E-1.500 — Procedures for Proceedings which Determine Substantial Interests and Associated Mediation.

The District's implementing procedures, Sections 120.569 and 120.57, F.S., for proceedings determining substantial interests and associated mediation are set forth in Uniform Rules of Procedure Chapter 28-106, F.A.C., and District's exceptions thereto, are set forth in this part in Rule 40E-1.511, F.A.C. This part does not apply to District investigations or probable cause determinations preliminary to agency action.

Specific Authority 120.54(5) FS.

Law Implemented 120.54(5) FS.

History — New 7-2-98.

40E-1.501 — Scope of Part V.

Specific Authority 120.53, 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.54(16), 120.57, 120.60(1), 373.113 FS.
History — New 9-3-81, Amended 5-11-93, Repealed 7-2-98.

40E-1.503 — Computation of Time.
Specific Authority 373.044, 373.113 FS.
Law Implemented 120.57 FS.
History — New 9-3-81, Repealed 7-2-98.

40E-1.504 — Parties.
Specific Authority 120.53, 373.044, 373.113 FS.
Law Implemented 120.52(12), 120.57, 373.113 FS.
History — New 9-3-81, Formerly 16K-1.111(1) — (4), Amended 5-11-93,
Repealed 7-2-98.

40E-1.505 — Appearances; Criteria for Authorized Representation.
Specific Authority 120.53, 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.62(2), 373.113 FS.
History — New 9-3-81, Formerly 16K-1.111(5), Repealed 5-11-93.

40E-1.506 — Consolidation.
Specific Authority 120.53, 373.044, 373.113 FS.
Law Implemented 120.57, 373.113 FS.
History — New 9-3-81, Repealed 5-11-93.

40E-1.507 — Joinder of Parties.
Specific Authority 120.53, 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57 FS.
History — New 9-3-81, Repealed 5-11-93.

40E-1.508 — Disqualification.
Specific Authority 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57, 120.71 FS.
History — New 9-3-81, Repealed 7-2-98.

40E-1.509 — Filing and Service of Papers.
Specific Authority 120.53(1), 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57, 373.113 FS.
History — New 9-3-81, Formerly 16K-1.112(4), Amended 5-11-93, Repealed 7-2-98.

40E-1.5095 — Publication of Notice of Agency Decision or Intended Agency Decision.

(1) In cases where a project is determined to be of heightened public concern, or where there is the likelihood of a request for an administrative hearing, where the proposed activity is potentially harmful to the water resources of the District or

40E-1.608 — Denial of Permits.

(1) Procedures concerning the District's denial of permit applications are contained in the Uniform Rules of Procedure, Rule 28-107.003, F.A.C.

(2) The District shall set forth in writing the grounds or basis for denial of a permit. For environmental resource permit applications, a notice of denial shall explain in general terms what changes, if any, would address the reasons for denial. Such changes shall not be limited to those modifications as described in subsection 4.2.1., "Basis of Review for Environmental Resource Permit Applications Within the South Florida Water Management District, August 1995", incorporated by reference in Rule 40E-4.091, F.A.C.

(3) A recommendation for denial is based exclusively upon the specific proposal submitted by the applicant. Denial of permit is without prejudice to the applicant's right to file a modified proposal through a new application.

Specific Authority 373.044, 373.113 FS.

Law Implemented 120.53(1), 120.57, 120.60 FS.

History — New 9-3-81, Amended 10-3-95, 7-2-98.

contrary to the overall objectives of Chapter 373, F.S., as outlined in Section 373.016, F.S., or if objection(s) to the application has been received, the District shall publish, or require the permit applicant to publish notice of agency decision or intended agency decision in the Florida Administrative Weekly or newspapers of general circulation in the area affected by such decisions as required by Chapter 50, F.S., and shall post notice and mail copies of its notice to applicants and interested groups. Such publication may be used as evidence of constructive and sufficient notice.

(2) The notice referenced above in subsection (1) shall contain the same information in substantially the same form as shown in Form No. 0985, "South Florida Water Management District Notice of Proposed Agency Action." This form is hereby incorporated by reference and is available from the District upon request.

Specific Authority 120.54(5), 373.413 FS.

Law Implemented 120.54(5), 373.413 FS.

History — New 7-2-98.

40E-1.510 — Complaints, District Investigations and Probable Cause Determinations.

Specific Authority 120.53(1), 120.54(10), 373.044, 373.113 FS.

Law Implemented 120.53(1), 120.57(4), 120.61, 373.219(2), 373.229(2), 373.429 FS.

History — New 9-3-81, Formerly 16K-1.09, 16K-2.03(3), Amended 5-11-93, Transferred to 40E-1.721.

40E-1.511 — Point of Entry Into Proceedings.

Procedures regarding point of entry into proceedings determining substantial interests and mediation are set forth in the Uniform Rules of Procedure Section 28-106.111, F.A.C. The following exceptions are applied in combination with the applicable Uniform Rules of Procedure.

(1)(a) "Receipt of written notice of agency decision" as set forth in Rule 28-106.111, F.A.C., means receipt of either written notice through mail or posting that the District has or intends to take final agency action, or publication of notice that the District has or intends to take final agency action.

(b) If notice is published pursuant to this chapter, publication shall constitute constructive notice to all persons. Until notice is published, the point of entry to request a formal or informal administrative proceeding shall remain open unless actual notice is received.

(2) If the Board takes action which substantially differs from the notice of intended agency decision, the applicant or persons who may be substantially affected shall have an additional 21 days, unless otherwise designated by rule, from the date or receipt of notice of said decision to request an administrative hearing. However, the scope of the administrative hearing shall be limited to the substantial deviation.

(3) Notwithstanding the timeline in Rule 28-106.111, F.A.C., intended agency decisions or agency decisions regarding consolidated applications for

Environmental Resource Permits and Use of Sovereign Submerged Lands pursuant to Section 373.427, F.S., a 14 day point of entry to file petitions for administrative hearing.

(4) Applicants entitled to a hearing pursuant to Section 120.57(1), F.S., may waive their right to such a hearing and request an informal hearing before the Governing Board pursuant to Section 120.57(2), F.S., which may be granted at the option of the Governing Board.

Specific Authority 120.53, 373.044, 373.113 FS.

Law Implemented 120.53(1), 120.54(17), 120.57, 373.113 FS.

History — New 9-3-81, Amended 7-26-87, 5-11-93, 10-3-95, 7-2-98.

40E-1.512 — Other Applicable Procedural Rules.

Specific Authority 120.53(1), 373.044, 373.113 FS.

Law Implemented 120.54(1), 120.57, 373.113 FS.

History — New 5-11-93, Repealed 7-2-98.

Subpart B Formal Proceedings

40E-1.520 — Procedures Concerning Formal Proceedings.

Formal proceedings under Section 120.57(1), F.S., shall be conducted pursuant to Part II of Chapter 28-106, F.A.C.

Specific Authority 120.54(5) FS.

Law Implemented 120.54(5) FS.

History — New 7-2-98.

40E-1.521 — Initiation of Formal Proceedings.

(1) Initiation of formal proceedings under Section 120.57(1) shall comply with the procedures in Rule 28-106.201, F.A.C.

(2) If a valid petition is filed, with the consent of all parties Board action on the petition pursuant to Section 120.57(1)(b) shall be waived.

(3) When a valid petition for administrative hearing has been filed, pursuant to Section 120.569, F.S., the Board action shall defer consideration of the matter pending the completion of the administrative hearing and the submittal of a recommended order, and any exceptions to that order.

Specific Authority 120.53, 373.044, 373.113 FS.

Law Implemented 120.53(1), 120.57, 373.113 FS.

History — New 9-3-81, Formerly 16K-1.09(1), 16K-1.112(1) — (3), 16K-1.12, Amended

5-11-93, 7-2-98.

40E-1.522 — Amendment of Petitions.

Specific Authority 373.044, 373.113 FS.

Law Implemented 120.53(1), 120.57 FS.

History — New 9-3-81, Repealed 7-2-98.

40E-1.523 — Answer.

Specific Authority 120.53, 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57, 373.113 FS.
History — New 9-3-81, Formerly 16K-1.112(5), Repealed 5-11-93.

40E-1.524 — Motions.
Specific Authority 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57 FS.
History — New 9-3-81, Repealed 7-2-98.

40E-1.525 — Motions in Opposition to Petition.
Specific Authority 120.53, 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57, 373.113 FS.
History — New 9-3-81, Amended 5-11-93, Repealed 7-2-98.

40E-1.526 — Prehearing Conferences.
Specific Authority 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57 FS.
History — New 9-3-81, Repealed 5-11-93.

40E-1.527 — Intervention.
Specific Authority 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57 FS.
History — New 9-3-81, Formerly 16K-1.111(2)(e), Repealed 7-2-98.

40E-1.528 — Discovery.
Specific Authority 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57 FS.
History — New 9-3-81, Formerly 16K-1.11(8), (9), Repealed 5-11-93.

40E-1.529 — Notice of Hearing.
Specific Authority 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57 FS.
History — New 9-3-81, Repealed 5-11-93.

40E-1.530 — Continuances.
Specific Authority 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57 FS.
History — New 9-3-81, Formerly 16K-1.11(7), Repealed 5-11-93.

40E-1.531 — Dismissal and Default.
Specific Authority 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57 FS.
History — New 9-3-81, Repealed 5-11-93.

40E-1.541 — Subpoenas.
Specific Authority 373.044, 373.113 FS.

Law Implemented 120.53(1), 120.57, 120.58(1) FS.
History — New 9-3-81, Formerly 16K-1.11(9), Repealed 7-2-98.

40E-1.542 — Witness Fees.
Specific Authority 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57 FS.
History — New 9-3-81, Repealed 5-11-93.

40E-1.543 — Order of Presentation.
Specific Authority 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57 FS.
History — New 9-3-81, Formerly 16K-1.11(3), (4), (5), Repealed 5-11-93.

40E-1.544 — Burden of Proof.
Specific Authority 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57, 120.58 FS.
History — New 9-3-81, Repealed 7-2-98.

40E-1.545 — Witnesses.
Specific Authority 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57 FS.
History — New 9-3-81, Formerly 16K-1.11(2), (6), Repealed 5-11-93.

40E-1.546 — Evidence.
Specific Authority 120.53, 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57, 120.58, 373.113 FS.
History — New 9-3-81, Amended 5-11-93, Repealed 7-2-98.

40E-1.547 — Recordation.
Specific Authority 120.53, 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57, 373.113 FS.
History — New 9-3-81, Amended 5-11-93, Repealed 7-2-98.

40E-1.548 — Venue.
Specific Authority 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57 FS.
History — New 9-3-81, Repealed 7-2-98.

40E-1.561 — Post-Hearing Memoranda.
Specific Authority 120.53, 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57, 373.113 FS.
History — New 9-3-81, Amended 5-11-93, Repealed 7-2-98.

40E-1.562 — Recommended Order.
Specific Authority 373.044, 373.113 FS.
Law Implemented 120.53(1), 120.57, 120.58(1) FS.

History — New 9-3-81, Formerly 16K-1.11(10), Repealed 7-2-98.

40E-1.564 — Exceptions to Recommended Order.

(1) The procedures for filing exceptions to findings of fact or conclusions of law in a recommended order, and for filing responses thereto, are contained in Rule 28-106.217, F.A.C.

(2) Exceptions to findings of fact or conclusions of law which are based upon facts not found by the hearing officer shall be accompanied by the original and ten (10) copies of a complete transcript provided at the expense of the party filing exceptions, provided however, that the parties may stipulate that a lesser portion of the transcript be filed. The transcript shall be filed within 20 days of the date of the recommended order or prior to the Board meeting at which the exceptions are to be considered, whichever first occurs.

(3) Each exception shall state with particularity the finding of fact, conclusion of law, or recommendation which is objectionable and the basis for asserting that the hearing officer erred in making or omitting specific findings of fact, conclusions of law or a recommendation. Specific reference must be made to those portions of the transcript which support the exception in order for the exception to be considered.

Specific Authority 120.53, 373.044, 373.113 FS.

Law Implemented 120.53(1), 120.57, 373.113 FS.

History — New 9-3-81, Formerly 16K-1.11(10), Amended 5-11-93, 7-2-98.

40E-1.565 — Final Order.

(1) Final orders entered in a proceeding determining substantial interests shall be considered at a public meeting. This proceeding shall not be a de novo review, but shall be confined to the record submitted to the Board together with the recommended order.

(2) If a party files exceptions to a recommended order, or, for hearings conducted by the Board submits proposed findings of fact or conclusions of law to the Board, the final order shall include an explicit ruling on each exception, proposed finding of fact, or conclusion of law as well as a brief statement of grounds for denying the exception or proposed finding of fact; provided however, the District is not required to make explicit rulings on subordinate, cumulative, immaterial or unnecessary proposed facts and such proposed facts may be rejected in the final order by simple statement that they are irrelevant or immaterial.

Specific Authority 373.044, 373.113 FS.

Law Implemented 120.53(1), 120.57, 120.59, 120.60 FS.

History — New 9-3-81, Formerly 16K-1.11(11), Amended 7-2-98.

Subpart C Informal Proceedings

40E-1.570 — Procedures Concerning Informal Proceedings.

Informal proceedings for determining substantial interests shall be initiated and conducted pursuant to Part III of Chapter 28-106, F.A.C.

Specific Authority 120.54(5) FS.

Law Implemented 120.54(5) FS.

History — New 7-2-98.

40E-1.571 — Informal Proceedings.

Specific Authority 120.53, 373.044, 373.113 FS.

Law Implemented 120.53(1), 120.57(2), 373.113 FS.

History — New 9-3-81, Amended 5-11-93, Repealed 7-2-98.

40E-1.572 — Submission of Evidence.

Specific Authority 373.044, 373.113 FS.

Law Implemented 120.53(1), 120.57(2) FS.

History — New 9-3-81, Repealed 7-2-98.

40E-1.573 — Final Order.

Specific Authority 373.044, 373.113 FS.

Law Implemented 120.53(1), 120.57(2) FS.

History — New 9-3-81, Repealed 7-2-98.

PART VI PERMITS

40E-1.601 — General.

All District actions regarding the application for issuance, denial, modification, suspension, and revocation of permits shall be governed by Sections 120.569, 120.57, and 120.60, Florida Statutes, and the rules in Chapter 28-107, F.A.C., and this part.

Specific Authority 120.53, 373.044, 373.113 FS.

Law Implemented 120.53(1), 120.57, 120.60, 373.085, 373.116, 373.119, 373.175, 373.229, 373.239, 373.243, 373.246, 373.413, 373.416, 373.429, 373.433, 373.436, 373.439 FS.

History — New 9-3-81, Amended 5-11-93, 7-2-98.

40E-1.6015 — Delegation of Authority Pertaining to General Environmental Resource Permits, General Surface Water Management Permits and Associated Sovereign Submerged Lands Authorizations.

Specific Authority 120.53(1), 373.044, 373.113, 373.118 FS.

Law Implemented 120.53, 373.016, 373.118 FS.

History — New 4-1-96, Transferred to 40E-40.061.

40E-1.602 — Permits Required.

Unless expressly exempt by statute or District rule, permits must be obtained from the District prior to commencement of the following activities:

(1) A water use individual or general permit pursuant to Chapters 40E-2 or 40E-20, F.A.C., must be obtained prior to use or withdrawal of water or dewatering activities;

- (2) A water well construction permit pursuant to Chapter 40E-3, F.A.C., must be obtained prior to the construction, repair or abandonment of any well within the District;
- (3) A water well contractor's license, pursuant to Chapter 40E-3, F.A.C., must be obtained by contractors engaged in the business of construction, repair, or abandonment of water wells.
- (4) An individual or general environmental resource permit pursuant to Chapters 40E-4, 40E-40, or 40E-400, F.A.C., or, an individual or general surface water management or wetland resource permit grandfathered pursuant to Section 373.414(11) — (16), F.S., must be obtained prior to:
- (a) construction, alteration, operation, maintenance, repair or abandonment of any surface water management system, dam, impoundment, reservoir, appurtenant work or works including dredging or filling as prescribed by District rule,
 - (b) establishment and operation of a mitigation bank.
- (5) A conceptual environmental resource permit may be obtained for proposed surface water management systems or mitigation banks. However, a conceptual permit does not authorize construction or operation. A conceptual mitigation bank permit can be utilized to estimate the legal and financial requirements for the mitigation bank, information required for evaluation of the mitigation bank permit application, and potential mitigation credits that would be awarded to the specific project proposal.
- (6) A proprietary authorization pursuant to Chapters 253 and 258, F.S., is required and shall be reviewed by the District for all activities which require a permit under Chapters 40E-4, 40E-40, or 40E-400, F.A.C., or a permit under subsections 373.414(11) — (16), F.S., and which are located on submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund pursuant to Section 373.427, F.S., Chapter 18-21, F.A.C., and Rules 18-18.014 and 62-343.075, F.A.C.
- (7) An artificial recharge permit pursuant to Chapter 40E-5, F.A.C., must be obtained prior to construction of any project involving artificial recharge or the intentional introduction of water into any underground formation;
- (8) A Works or Lands of the District permit pursuant to Chapter 40E-6, F.A.C., must be obtained prior to connecting with, placing structures in or across, discharging into or making use of works of the District and any additional lands or real property interests owned by the District.
- (9) A Use of Works of the District within the Lake Okeechobee Basin General or Individual Permit must be obtained pursuant to Chapter 40E-61, F.A.C., by any owner of a parcel of land within the Lake Okeechobee Basin.
- (10) An Occupancy or Use of the C-18 Right of Way general or individual permit pursuant to Chapter 40E-62, F.A.C., must be obtained prior to constructing, planting, maintaining, pruning, mooring boats, and placing other items on, across, under, or upon District lands and works along the C-18 canal right of way.

(11) A Use of Works of the District within the Everglades general, individual or master permit pursuant to Chapter 40E-63, F.A.C., must be obtained by any owner of a parcel of land in the Everglades Agricultural Area.

Specific Authority 373.044, 373.113, 373.4135 FS.

Law Implemented 120.53(1), 120.57, 120.60, 373.085, 373.106, Chapter 373 Parts II and IV FS.

History — New 9-3-81, Formerly 16K-1.06, Amended 7-26-87, 5-11-93, 10-3-95, 4-1-96.

40E-1.6025 — Permit Applications Processed by District Service Centers.

Specific Authority 373.044, 373.113 FS.

Law Implemented 120.53(1) FS.

History — New 10-3-95, Repealed 7-2-98.

40E-1.603 — Application Procedures for Conceptual Approval, Individual and General Permits.

(1) The following procedures for processing permit applications or notices of intent apply in addition to the requirements of Section 120.60, F.S., and Rule 28-107.002, F.A.C.

(a) Within 30 days of receipt of an application or notice of intent, the District shall review the application to determine whether all information needed to evaluate the application has been submitted. The District shall notify the applicant of the date on which the application is declared complete.

(b) If the District determines that the application is incomplete, the District shall request the information needed to complete the application within 30 days of its receipt. For individual permits and standard general permits, the applicant shall have 90 days from receipt of a timely request for additional information to submit that information to the District.

(c) The District may request information needed to clarify any additional information submitted by the applicant, or to answer new questions raised by or related to the additional information within 30 days of its receipt. The applicant shall have 30 days from receipt of such a request in which to provide the necessary information. If the application is still incomplete after such information is submitted, the District shall notify the applicant within 30 days. The applicant shall have an additional 30 days to complete the application.

(d) Failure of an applicant to provide the timely requested information within these timeframes shall be considered grounds for denial of the application. Denial of an application for lack of completeness is without prejudice to the applicant's right to file a new application on the same subject matter. The District may grant an extension upon a showing of good faith by the applicant. Unless an extension of time has been granted by the District, any application which remains incomplete 240 days after the original submittal date of an individual permit application or 90 days after the original submittal date of a notice of intent for general permit, shall be denied without prejudice.

(e) If the applicant submits information, either in response to or independent of a request by the District, which incorporates or results in a substantial modification

in the proposed activity for which the applicant seeks a permit, the application will be considered an amended application. For purposes of this subsection, the term "substantial modification" shall mean a modification reasonably expected to result in water resource or environmental impacts which differ from those expected from the original application and require detailed review. Review timelines of the permit application or notice of intent will be reinitiated under this section.

(2) Upon a determination by the District that the activity requested in the notice of intent for any general permit requires an individual permit, the notice of intent shall be processed as an application for an individual permit, unless the permit applicant withdraws the application. If the application is processed as an individual permit, the permit applicant will be required to submit payment equal to the difference between the applicable fee for the individual permit and the fee previously submitted.

(3)(a) Agency action on individual permits and conceptual approvals shall occur within 90 days of receipt of a complete application, including receipt of all requested information and correction of any error or omission of which the applicant was timely notified.

(b) An authorization to proceed for standard general permits in Chapter 40E-20 shall occur within 60 days of receipt of a complete notice of intent, including receipt of all requested information and correction of any error or omission of which the applicant was timely notified.

(c) Agency action on a standard general permit application in Chapter 40E-40 shall occur within 60 days of receipt of a complete application, including receipt of all requested information and correction of any error or omission of which the applicant was timely notified.

(d) An authorization to proceed for general permits in Chapter 40E-30 shall be issued within 30 days of receipt of a complete notice of intent, including receipt of all requested information and correction of any error or omission of which the applicant was timely notified.

(e) Noticed general permits under Chapter 40E-400 may be utilized by the applicant 30 days after the District receives the notice of intent, unless a notice that the project does not qualify for the noticed general permit is mailed by the District within 30 days, in accordance with Rule 40E-400.211. If notice that the proposed project does not qualify for the noticed general permit is mailed by the District to the applicant, the review process under Subsection (1) shall be initiated or the applicant shall be required to apply for the appropriate permit if the requested activity is not covered by the noticed general permit rule.

Specific Authority 120.53(1), 373.044, 373.113 FS.

Law Implemented 120.60, 373.107, 373.109, 373.116, 373.229, 373.417, 373.421, 373.422 FS.

History — New 9-3-81, Formerly 16K-1.08(1) — (8), Amended 7-1-86, 7-26-87, 11-21-89, 5-11-93, 10-3-95, 4-1-96, 7-2-98.

40E-1.604 — Bond.

(1) The Board may require the applicant for a permit to furnish a bond made payable to the District and its successors, with a reputable bonding corporation authorized to do business in this State as surety, conditioned upon full compliance with terms of the permit, including the proper construction, operation, and maintenance of the facility. The amount of the bond shall be determined by the Board.

(2) The Board may require liability insurance in such amount as the Board may determine endorsed in favor of the District or a hold harmless agreement satisfactory to the Board, in lieu of a bond under subsection (1).

(3) The Board may require that the bond or liability insurance be maintained as a condition of the continued validity of the permit.

Specific Authority 373.044, 373.113 FS.

Law Implemented 373.085, 373.103, 373.219, 373.413, 373.416 FS.

History — New 9-3-81, Formerly 16K-1.061.

40E-1.605 — Complaints.

Specific Authority 120.53(1), 120.54(10), 373.044, 373.113 FS.

Law Implemented 373.219(2), 373.229(2), 373.429 FS.

History — New 9-3-81, Formerly 16K-1.09, 16K-2.03(3), Repealed 5-11-93.

40E-1.6051 — Application Procedures for Noticed General Environmental Resource Permits Pursuant to Chapter 40E-400, F.A.C.

Specific Authority 373.044, 373.113, 373.118 FS.

Law Implemented 120.53(1), 120.60, 373.118 FS.

History — New 10-3-95, Repealed 7-2-98.

40E-1.6058 — Publication and Requests for Notification of Permit Applications or Notices of Intent.

(1) Written Notice of Receipt of Permit Application or Notice of Intent.

Persons who wish to be notified in writing of any permit application or notice of intent which affects a designated geographic area shall notify the District in writing, and shall specify their area of interest by county. Requests must be renewed every 6 months. The District shall provide written notice of receipt of application or notice of intent to all persons who have filed in the preceding 6 months a written request for notification of any application or notice of intent affecting the designated geographic area in which the proposed activity is to occur.

(b) Notices of intent for general permits shall be posted in the District Service Center responsible for reviewing the notice of intent.

(2) Publication of Notice of Receipt of Permit Application or Notice of Intent.

(a) Within 45 days of receipt of an individual permit application, the District shall publish notice thereof in a newspaper having general circulation as defined in Chapter 50, F.S., in the county in which the activity will occur.

(b) Within 14 days of filing notice of intent to use a general permit or application for a standard general permit, persons qualifying for the use thereof are not required to, but may publish notice of such filing in a newspaper of general

circulation, as defined in Chapter 50, F.S., in the area affected by the proposed project. Proof of publication shall be submitted to the district within 14 days of publication. To constitute valid notice to interested parties, the notice shall contain the format provided in Form No. 0985, "South Florida Water Management District Notice of Proposed Agency Action." This form is hereby incorporated by reference and is available from the District upon request.

(c) Published Notice of Use for No Notice General Permits. Publication of notice of use of general permits for which no notice is required to be filed with the District may occur if desired by the permittee. The published notice must contain the information in substantially the same form as set forth in Form 0985, and be published in a newspaper of general circulation, as defined in Chapter 50, F.S., in the area affected by the proposed project within 7 days of commencing work. If published, proof of publication must be submitted to the district within 14 days of publication.

(3) Interested persons shall have the opportunity to inspect a copy of the permit application at the appropriate District Service Center and submit written comments, which shall be considered by the District if received before the District issues proposed agency action concerning the application. Where appropriate, the District shall request that persons submitting comments furnish additional information reasonably necessary to ascertain the nature of the comments.

(4) Persons who wish to be advised of the proposed agency action regarding a particular permit application shall file a written request for further notice within 14 days of receipt of the notice of application.

(5) The governing board may charge a subscription fee for information requested in accordance with this section to any person who has filed a written request for notification of any pending applications, pursuant to Rule 40E-1.125, F.A.C. Specific Authority 373.044, 373.113 FS.

Law Implemented 120.53(1), 120.60(3) FS.

History — New 10-3-95, Amended 7-2-98.

40E-1.6059 — Public Notice Requirements Concerning Receipt of Environmental Resource or Surface Water Management Permit Applications, and Proposed Agency Action.

Specific Authority 373.044, 373.113 FS.

Law Implemented 120.53(1), 120.60(3), 373.146, 373.413(3), (6) FS.

History — New 10-3-95, Repealed 7-2-98.

40E-1.606 — Application Procedures for General Water Use Permits.

Specific Authority 120.53, 373.044, 373.113, 373.118 FS.

Law Implemented 120.53(1), 120.60(2), 373.118 FS.

History — New 7-31-87, Amended 11-21-89, 5-11-93, 10-3-95, Repealed 7-2-98.

40E-1.6062 — Public Notice Requirements for Water Use Permit Applications and Proposed Agency Action.

Specific Authority 373.044, 373.113 FS.

Law Implemented 120.53(1), 120.60(3), 373.146, 373.219, 373.229 FS.

History — New 10-3-95, Repealed 7-2-98.

40E-1.6065 — Consideration of Intended Agency Decision on Permit Applications.

(1) After the application for a permit is declared by staff to be complete, if a governing board hearing on the permit application is required, the District shall prepare a Staff Review Summary, which shall contain its recommendations regarding the subject application and which shall constitute intended agency decision. A notice of intended agency decision together with the Staff Review Summary shall be furnished to the applicant and any persons requesting the same pursuant to Rules 40E-.6058, as applicable. The notice shall state the District Staff's recommendation that the Governing Board approve, deny, or approve with conditions the permit application and the reasons therefore.

(2) The Governing Board shall consider the application for a conceptual approval, individual environmental resource, individual surface water management, or individual water use permit application at its next available regularly scheduled regulatory meeting following the mailing of notice of intended agency decision, unless an administrative hearing is requested and granted pursuant to Section 120.569, F.S.

(3) In no case shall agency action be taken later than 90 days after the application for a conceptual approval, individual environmental resource permit, or individual water use permit is declared complete unless waived by the applicant or stayed by the filing of a petition for an administrative hearing. The permit applicant may voluntarily waive the timeline for governing action on the permit application in Section 120.60, F.S., in order to resolve any outstanding issues, including third party objections, regarding the project.

(4) Because the Governing Board may take a final agency action which materially differs from the noticed intended agency action, applicants and other interested persons should be prepared to defend their position regarding the permit application when it is considered by the Governing Board. If the Governing Board takes final agency action which materially differs from the intended agency decision, the District shall mail a notice of the final agency action to all persons who were notified of the intended agency decision. The final agency action can be challenged only to the extent that it differs from the intended agency decision.

Specific Authority 120.53(1), 373.044, 373.113 FS.

Law Implemented 120.60, 373.107, 373.109, 373.116 FS.

History — New 7-2-98.

40E-1.607 Permit Application Processing Fees.

A permit application processing fee is required and shall be paid to the District when certain applications are filed pursuant to District rules. An application shall not be considered complete until the appropriate application fee is submitted. These fees are assessed in order to defray the cost of evaluating, processing, monitoring, and inspecting for compliance required in connection with consideration of such applications. Fees are non-refundable in whole or part unless the activity for which an application is filed is determined by the District to be exempt or the fee submitted is determined by the District to be incorrect. Failure of any person to pay the applicable fees established herein will result in denial of an application. Activities that do not require a permit and are exempt pursuant to Rules 40E-2.051, F.A.C. or 40E-3.051, F.A.C. are not subject to the following permit application fees. The District's permit application processing fees are as follows:

- (1) Water Use Permit Application processing fees are in the following table:

TABLE 40E-1.607(1)

PERMIT APPLICATION PROCESSING FEES FOR

WATER USE PERMIT APPLICATIONS

REVIEWED PURSUANT TO CHAPTERS 40E-2 AND 40E-20, F.A.C.

Fee amounts shall apply to applications for new permits, permit modifications, and permit renewals, except as noted.

Category	Amount
Individual Public Water Supply	
Maximum daily allocation	
Greater than 0.1 million gallons per day (mgd)	
through 1 mgd	\$ 2700
Greater than 1 mgd through 10 mgd	\$ 5500
Greater than 10 mgd	\$ 7000
Individual Agriculture Irrigation renewal with a duration less than 20 years	\$1000
Individual Irrigation; except Individual Agriculture Irrigation renewal with a duration less than 20 years	
Maximum daily allocation	
Greater than 0.1 mgd through 1 mgd	\$ 1000
Greater than 1 mgd through 10 mgd	\$ 2500
Greater than 10 mgd	\$ 3500
Individual Mining (Dewatering)	
Maximum daily allocation	
Greater than 0 mgd through 1 mgd	\$ 1800
Greater than 1 mgd through 10 mgd	\$ 3250

Greater than 10 mgd	\$ 4000
Individual Industrial	
Maximum daily allocation	
Greater than 0.1 mgd through 1 mgd	\$1400
Greater than 1 mgd through 10 mgd	\$ 2750
Greater than 10 mgd	\$ 3500
General	
	\$ 350
Short-term Dewatering	\$500
Permit Transfer to Another Entity Pursuant to Rules 40E-1.611 and 40E-2.351, F.A.C.	\$ 450
Letter Modification to Individual Permit	no fee
Letter Modification to General Permit	no fee

(2) Water Well Construction Permit Application processing fees are in the following table:

TABLE 40E-1.607(2)
PERMIT APPLICATION PROCESSING FEES FOR
WATER WELL CONSTRUCTION PERMIT APPLICATIONS
REVIEWED PURSUANT TO CHAPTER 40E-3, F.A.C.

Category	Amount
Water Well Construction	\$ 100
Water Well Abandonment	no fee

(3)(a) Environmental Resource Permit Application processing fees are in the following table:

TABLE 40E-1.607(3)(a)
PERMIT APPLICATION PROCESSING FEES FOR
ENVIRONMENTAL RESOURCE PERMIT APPLICATIONS
REVIEWED PURSUANT TO CHAPTERS 40E-4, 40E-40, AND 40E-400, F.A.C.

Fee amounts shall apply to applications for conceptual and construction, or conceptual, or construction, except as noted.

Category	Amount
New Individual Permit, except Mitigation Bank	
Project area less than 100 acres	
Agriculture	\$ 3050
All others	\$ 5000
Project area 100 acres to less than 640 acres	
Agriculture	\$ 4000
All others	\$ 7500
Project area 640 acres or more	
Agriculture	\$ 5000
All others	\$ 10,000
New Individual Permit, Mitigation Bank	
Project area less than 100 acres	\$ 5000
Project area 100 acres to less than 640 acres	\$ 7500
Project area 640 acres or more	\$ 10,000
Individual Permit Modification, except Mitigation Bank	
Project area less than 100 acres	
Agriculture	\$ 2050
All others	\$ 3500

Project area 100 acres to less than 640 acres	
Agriculture	\$ 2500
All others	\$ 5000
Project area 640 acres or more	
Agriculture	\$ 3500
All others	\$ 7500
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Individual Permit Modification, Mitigation Bank	
Project area less than 100 acres	\$ 3500
Project area 100 acres to less than 640 acres	\$ 5000
Project area 640 acres or more	\$7500
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New Standard General Permit (excluding incidental site activities pursuant to Section 40E-40.042, F.A.C.)	
Agriculture	\$ 650
All others	\$ 2000
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Standard General Permit Modification including	

<p>Application for phase construction under a Conceptual Approval</p> <p>Application for individual permit modification for a system which does not exceed the criteria in Section 40E-40.041, F.A.C. and which is not required to obtain an individual environmental resource permit for the reasons in Rule 40E-40.011(2), F.A.C.</p> <p>Agriculture</p> <p>All others</p>	<p>\$ 500</p> <p>\$ 1000</p>
<p>Noticed General Permit pursuant to Chapter 40E-400, F.A.C., including aquaculture</p>	<p>\$ 100</p>
<p>Single family residential homesite consisting of 10 acres or less in total land area</p>	<p>\$ 100</p>
<p>Standard General Permit for incidental site activities pursuant to Section 40E-40.042, F.A.C.</p>	<p>\$ 500</p>
<p>Transfer of permit (including Mitigation Bank) to another entity pursuant to sections</p>	

40E1.6107 and 40E-4.351, F.A.C.	\$450
Variance associated with an environmental resource permit application	
From Rule 40E-4.301(1)(e), F.A.C.	\$ 100
From other permitting standards, permit conditions, or water quality standards	\$ 500
New Individual Operation Permit	\$ 3500
Letter Modification	\$ 100

1. When used in Table 40E-1.607(3)(a), "Agriculture" shall be defined as set forth in Section 570.02, F.S.
2. For permit applications which involve a combination of fee categories, the highest fee that applies shall be charged.
3. Any individual permit application submitted concurrently with a conceptual approval application - where the individual permit application represents a phase of the conceptual approval application - is exempt from the above environmental resource permit fees.
4. For projects grandfathered pursuant to Section 373.414, F.S., the letter modification, conceptual approval, individual or general surface water management permit application fee shall be the same as listed in Table 40E-1.607(3)(a).

(b) Permit application processing fees for projects grandfathered pursuant to Section 373.414, F.S. wetland resource (dredge and fill) are in the following table:

TABLE 40E-1.607(3)(b)

**PERMIT APPLICATION PROCESSING FEES FOR
PROJECTS GRANDFATHERED PURSUANT TO SECTION 373.414, F.S.
WETLAND RESOURCE (DREDGE AND FILL) PERMIT APPLICATIONS
REVIEWED PURSUANT TO CHAPTERS 40E-4, 40E-40, AND 40E-400, F.A.C.**

Category	Amount
Construction projects up to and including 5 years	
Standard form projects including dredge and fill activities that affect 10 or more acres of jurisdictional area, pursuant to Rule 62-312.070(2), F.A.C. (1993)	\$ 4000
Short form construction projects including dredging and filling activities that affect less than 10 acres of jurisdictional area, pursuant to Rule 62-312.070(2), F.A.C. (1993)	\$ 500
Short form construction projects involving the construction of new docking or boardwalk facilities, pursuant to Section 62-312.070(2), F.A.C. (1993) that provide:	

0-2 new boat slips	\$ 300
3-9 new boat slips	\$ 500
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Dredge and fill construction permits in excess of 5 years	
Short form permits from 6 years up to and including 10 years	\$ 3000
Standard form permit application processing fee for a construction period of 6 years shall be \$ 6000 and shall increase by \$ 1000 for each year beyond 6 years, up through and including 25 years and a corresponding fee of \$ 25,000	
<hr/>	
Variance associated with a wetland resource permit application	
From the prohibition of Rule 62-312.080(7), F.A.C.	\$ 100
From other permitting standards, permit conditions, or water quality standards	\$ 500
<hr/>	
General Permits	\$ 100

<p>Minor modifications of permits that do not require substantial technical evaluation by the District, in conformance with Rules 62-4.050(6) and (7), F.A.C. (1993), do not require a new site inspection by the District, and will not lead to substantially different environmental impacts or will lessen the impacts of the original permit:</p> <p>Transfer of permits or time extensions</p> <p>Minor technical changes</p> <p>Existing permit fee is less than \$ 300, except for modification to permits issued pursuant to Section 403.816, F.S.</p> <p>Existing permit fee is equal to or more than \$ 300</p>	<p>\$ 50</p> <p>\$ 50</p> <p>\$250</p>
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1. For the purposes of determining the fee for wetland resource management permits, the term of duration for the permit shall be reduced by the period of time (in yearly increments) during which no dredging or filling activity occurs or no reclamation, restoration, or mitigation occurs and only minor monitoring and maintenance activities are required. The fee

for the full term shall be submitted with the application. After the District determines the period of time that the term of the permit can be reduced, the excess fee shall be returned.

2. For permit applications which involve a combination of the project fee categories listed above, the highest fee that applies to the appropriate standard form or short form project, pursuant to Section 62-312.070, F.A.C., shall be charged.

3. A single additional fee of \$500 shall be required for projects in which monitoring and evaluation to determine the success of the mitigation will be required beyond the period of time to which the permit fee will ordinarily apply. If it is determined at the time of the permit application that monitoring and evaluation to determine the success of the mitigation will be required beyond the time period to which the permit fee will ordinarily apply, then this single additional fee shall be due when it is determined that this monitoring and evaluation is required.

(4) Application for proprietary authorization under Chapters 253 and 258, F.S., except consent of use authorizations, processing fees are in the following table:

TABLE 40E-1.607(4)
PERMIT APPLICATION PROCESSING FEES FOR
PROPRIETARY AUTHORIZATIONS UNDER
CHAPTERS 253 AND 258, F.S.,
EXCEPT CONSENT OF USE AUTHORIZATIONS

Category	Amount
Application	\$200

(5) Petition for Formal Determination of Wetlands and Other Surface Waters
processing fees are in the following table:

TABLE 40E-1.607(5)
DETERMINATION PETITION PROCESSING FEES FOR
FORMAL DETERMINATION OF WETLANDS AND
OTHER SURFACE WATERS

For the validation of informal, non-binding wetland determinations pursuant to Section 373.421(6), F.S. the fees shall be the same as formal determinations listed in Table 40E-1.607(5).

Category	Amount
Property less than or equal to 1 acre	\$250
Property greater than 1 acre but less than or equal to 10 acres	\$550
Property greater than 10 acres but less than or equal to 40 acres	\$750
Property greater than 40 acres but less than or equal to 120 acres	\$1500
Property greater than 120 acres	\$1500
Each additional 100 acres or portion thereof	\$200
Renewal	\$250

(6) Permit Processing Fee Waiver for Certain Local Governments.

Notwithstanding the provisions set forth above in this rule, the District shall waive permit processing fees for permit applications submitted by the governing body of a county with a population of less than 50,000, a municipality with a population of less than 25, 000, a county or municipality not included within a metropolitan statistical area, or a third party under contract with such a county or municipality, provided:

- (a) The project for which the fee waiver is sought serves a public purpose;
- and
- (b) The governing body submits Form No. 889 certifying that the fee reduction is necessary due to an environmental need for a particular project or activity; or
- (c) The governing body submits Certification of Waiver of Permit Application Processing Fee, Form No. 889, certifying that the permit processing fee is a fiscal hardship due to one of the following factors:
 - 1. Per capita taxable value is less than the statewide average for the current fiscal year;
 - 2. Percentage of assessed property value that is exempt from ad valorem taxation is higher than the statewide average for the current fiscal year;
 - 3. Any condition specified in Section 218.503, F.S., that determines a state of financial emergency;
 - 4. Ad valorem operating millage rate for the current year is greater than 8 mills; or
 - 5. A financial condition is documented in annual statements at the end of the current fiscal year which indicates an inability to pay the permit processing fee during that fiscal year.

Specific Authority 373.109, 373.421(6)(b0, F.S.

Laws Implemented 373.109, 373.421(6)(b), F.S.

History – New 1-8-89, Amended 1-2-91, 11-15-92, 6-1-93, 1-23-94, 10-3-95, 4-1-96, 11-08-99.

40E-1.609 — Suspension, Revocation and Modification of Permits.

(1) Procedures concerning the District's suspension, revocation and modification of a permit are contained in the Uniform Rules of Procedure, Rule 28-107.004, F.A.C.

(2) The District may suspend or revoke a permit, in whole or in part, when it determines that the permittee or an agent of the permittee has:

(a) submitted false or inaccurate information on an application or operational report;

(b) violated Chapter 373, F.S., or portions of Chapter 403, F.S., for which authority has been delegated to the District, and the rules promulgated thereunder, or any other provision of Florida law related to the operations or regulations of the District;

(c) failed to comply with an Administrative Order issued pursuant to Section 373.119, F.S.;

(d) violated a condition of the permit;

(e) failed to permit inspection of the subject property.

(3) The District may revoke a permit or modify its terms and conditions when it determines that such action is necessary to protect the public health, safety and welfare, prevent a public or private nuisance, or when the continued utilization of the permit becomes inconsistent with the objectives of the District. In such instances, due consideration shall be given to the extent to which the permittee has detrimentally relied upon the permit.

(4) The provisions of subsections (1) and (2) shall not preclude the District from exercising other enforcement remedies pursuant to Chapters 120, 373 and 403, F.S., when it determines such action is necessary and appropriate either in addition to or instead of suspension or revocation described above.

Specific Authority 120.53, 373.044, 373.113, 373.119, 373.129, 373.136 FS.

Law Implemented 120.53(1)(b), (c), 120.60(2), 373.119, 373.239, 373.243, 373.429 FS.

History — New 9-3-81, Amended 5-11-93, 10-3-95, 7-2-98.

40E-1.610 — Permit Renewal.

(1) Holders of renewable permits shall make timely application as required by Rule 40E-1.603 or Rule 40E-1.606, as applicable, for renewal so as to avoid expiration during the renewal process. When timely application is made, the existing permit shall not expire until final agency action, or if the permit is denied or the terms limited, until the last day for seeking review of the District order or a later date fixed by order of the reviewing court.

(2) Application for a permit renewal is timely only if actually filed at the District prior to expiration of the existing permit. Mailing the application does not constitute filing.

Specific Authority 120.53(1), 373.044, 373.113 FS.

Law Implemented 120.60, 373.219, 373.239, 373.323, 373.413 FS.

History — New 5-11-93.

40E-1.6105 — Notification of Transfer of Interest in Real Property.

Within 30 days of any transfer of interest or control of the real property at which any permitted facility, system, consumptive use, or activity is located, the permittee must notify the District, in writing, of the transfer giving the name and address of the new owner or person in control and providing a copy of the instrument effectuating the transfer. Notification of a transfer shall not constitute a permit transfer pursuant to Rule 40E-1.6107.

Specific Authority 373.044, 373.113 FS.

Law Implemented 373.083, 373.171, 373.309, 373.416, 373.426, 373.429, 373.436 FS.

History — New 5-11-93.

40E-1.6107 — Transfer of Environmental Resource, Surface Water Management, or Water Use Permit.

(1) To transfer an environmental resource, surface water management, or water use permit, the permittee, in addition to satisfying the applicable provisions in Rules 40E-2.351 and 40E-4.351, F.A.C., must provide information required in Rule 40E-1.6105, F.A.C., together with a written statement from the proposed transferee that it has reviewed the District permit and project design and will be bound by all terms and conditions of the permit, including all compliance requirements, for the duration of the permit.

(2) The District shall approve the transfer of a permit unless it determines that the proposed transferee cannot provide reasonable assurances that conditions of the permit will be met. The determination shall be limited solely to the ability of the new permittee to comply with the conditions of the existing permit, and it shall not concern the adequacy of those permit conditions.

(3) The District shall approve the transfer of the permit if the requirements in subsections (1) and (2) are met. If the District proposes to deny the transfer, it shall provide both the permittee and the proposed transferee a written objection to such transfer together with the notice of right to request a Chapter 120, F.S., proceeding on such determination.

(4) Until transfer is approved by the District, the permittee shall be liable for compliance with the permit. The permittee transferring the permit shall remain liable for any corrective actions that are required as a result of any violations of the permit which occurred prior to the transfer of the permit.

Specific Authority 120.53(1), 373.044, 373.113 FS.

Law Implemented 373.083, 373.171, 373.309, 373.416, 373.426, 373.429, 373.436 FS.

History — New 5-11-93, Amended 10-3-95.

40E-1.611 — Emergency Action.

The following applies to emergency actions, in addition to the procedures in Uniform Rules of Procedure Section 28-107.005, F.A.C.

(1) An emergency exists when immediate action is necessary to protect public health, safety or welfare; the health of animals, fish or aquatic life; the works of

the District; a public water supply, or recreational, commercial, industrial, agricultural or other reasonable uses of land and water resources.

(2) The Executive Director may employ the resources of the District to take whatever remedial action necessary to alleviate the emergency condition without the issuance of an emergency order, or in the event an emergency order has been issued, after the expiration of the requisite time for compliance with that order.

Specific Authority 120.54(5), 373.439 FS.

Law Implemented 120.54(5), 373.439 FS.

History — New 9-3-81, Amended 7-2-98.

40E-1.6115 — Emergency Authorization.

(1) Permission to initiate activities regulated under Chapter 373, F.S., prior to the issuance of a permit or authorization of use may be applied for, in writing, when emergency conditions justify. However, no such permission shall be granted unless the proposed use is already under consideration for a permit under District rules. A serious set of unforeseen or unforeseeable circumstances must exist to create an emergency. Mere carelessness or lack of planning on the part of the applicant shall not be sufficient grounds to warrant the granting of an emergency authorization.

(2) The Executive Director may grant an emergency authorization pursuant to section 373.119(2), F.S. The emergency authorization shall be presented to the Governing Board for concurrence at its next regularly scheduled meeting. Failure to receive the Governing Board's concurrence shall automatically invalidate the emergency authorization.

Specific Authority 120.54(5), 373.439 FS.

Law Implemented 120.54(5), 373.439 FS.

History — New 7-2-98.

40E-1.612 — Administrative Enforcement Action.

Specific Authority 120.53, 373.044, 373.113 FS.

Law Implemented 120.53(1)(b), (c), 120.60(2), 120.68, 120.69, 373.119, 373.129, 373.136, 373.209, 373.433, 373.603 FS.

History — New 9-3-81, Amended 5-11-93, Transferred to 40E-1.705.

40E-1.614 — Orders of Corrective Action and Consent Agreements.

Specific Authority 120.53, 373.044, 373.113 FS.

Law Implemented 373.119, 373.129, 373.136 FS.

History — New 5-11-93, Transferred to 40E-1.711.

40E-1.615 — Coordinated Agency Review Procedures for the Florida Keys Area of Critical State Concern.

(1) This rule applies to applications for environmental resource, surface water management, and water use permits for projects located in the Florida Keys Area of Critical State Concern when the applicant has elected coordinated agency review under Section 380.051, F.S.

(2) The following coordinated agency review procedures apply to projects which are eligible for exemptions from District environmental resource and water use permitting requirements:

(a) No permit and no coordinated agency review participation by the District is required for the water uses exempted by Rule 40E-2.051 (Exemptions), F.A.C.

(b) No permit and no coordinated agency review participation by the District is required for surface water management activities which are exempted by Rule 40E-4.051 (Exemptions), F.A.C.

(3) The following coordinated agency review procedures apply to projects which require permits pursuant to Chapters 40E-2 or 40E-20 (Consumptive Use) and 40E-4 or 40E-40, (Environmental Resource), F.A.C.:

(a) The Coordinated Review Application shall consist of the application information required by Rules 40E-1.603 or 40E-1.606, F.A.C., and Rules 40E-2.101 (Content of Application) or 40E-4.101 (Content of Application), F.A.C.

(b) The District's Coordinated Review process begins when the District receives the Coordinated Review Application from the Permit Coordinator as required by Rule 9J-19.006(3) (Initiation of Coordinated Review), F.A.C.

(c) The District's Coordinated Review process follows the permit review procedures set forth in Rule 40E-1.603, F.A.C. (Application Procedures for Conceptual Approval, Individual and Standard General Environmental Resource Permits, Individual and General Surface Water Management Permits, and Individual Water Use Permits).

(d) If the applicant waives the time limits required by Chapter 120 and Section 380.051, F.S., as set forth in Rule 9J-19.007, F.A.C., the District shall delay initiation of substantive review until written notice is received from the Permit Coordinator indicating that substantive review should begin, as provided in Rule 9J-19.007(3) (Coordination of Time for Sufficiency Review), F.A.C. If the applicant does not waive the time limits, the District shall begin substantive review when the Coordinated Review Application is complete.

(e) The Certification of the Coordinated Review Application required by Section 380.051(2)(a), F.S., and Rules 9J-19.002(3) (Purpose) and 9J-19.009(1) and (2) (Completion of Substantive Review), F.A.C., shall occur within 60 days after the District begins substantive review, and shall consist of the notice of proposed agency action together with the staff report on the individual permit pursuant to Rule 40E-1.603(6) (Procedures for Application for Individual Environmental Resource and Water Use Permits), F.A.C., which may recommend to the Governing Board approval, approval with conditions or denial of the permit.

(f) Certification concludes the coordinated agency review process. However, the applicant may complete the permit process as set forth in Rule 40E-1.603(6) — (11), F.A.C., which result in the Governing Board's approval, approval with conditions or denial of the permit.

Specific Authority 373.044, 373.113, 380.051 FS.

Law Implemented 380.051 FS.

History — New 9-22-87, Amended 10-3-95.

40E-1.659 — Forms and Instructions.

(1) The following forms and instructions are hereby incorporated by reference into this chapter:

Form No.	Date	Title
0050A	7-89	Application to the South Florida Water Management District for a Permit for Utilization of District Works and Modification of Existing Permit Works of the District No.
0108	3-91	Application for Release of Mineral, Canal, and Road Reservations Reserved Under Chapters 6456, 6957, 7305, 9131, 14717 and 20658, Laws of Florida
0113	8-95	Surface Water Management Permit No.
0115	8-95	Surface Water Management Permit Modification No.
0119	8-95	Wetland Resource Permit No.
0122	4-93	Application to the South Florida Water Management District for Authority to Utilize Works or Land of the District
0123	8-90	Well Construction Permit Application
0124	11-90	Well Completion Report
0145	8-95	Environmental Resource Permit No.
0157	8-95	Environmental Resource Permit Modification No.
0195	6-91	Public Water Supply Well Information and Classification
0196	10-89	Water Well Inspection Scheduling Card
0299	1-90	Water Use Permit No.
0444	8-95	Application for a Standard General Permit for Incidental Site Activities
0445	7-87	Notice of Intent to Short-term Dewater
0483	8-95	Request for Environmental Resource, Surface Water Management, Water Use, or Wetland Resource Permit Transfer
0645	8-95	Water Use Permit Application

0659	3-94	Notice of Intent to Use Water in Conjunction with Oil Well Drilling in Lee, Collier and Hendry Counties
0779	5-92	Guidance for Preparing an Application for a "Works of the District" Permit in the Everglades/Application for a Works of the District Permit
0830	4-94	Special Use Application and License
0881	8-95	Environmental Resource/Surface Water Management Permit Construction Completion/Construction Certification
0889	8-95	Certification of Waiver of Permit Application Processing Fee
0920	8-95	Request for Conversion of Environmental Resource/Surface Water Management Permit from Construction Phase to Operation Phase and Transfer of Permit to the Operating Entity
0938	8-95	Mitigation Construction Commencement Notice
0941	8-95	Environmental Resource Standard/Noticed General Permit No.
0942	8-95	Surface Water Management General Permit No.
0960	8-95	Environmental Resource/Surface Water Management Permit Construction Commencement Notice
0961	8-95	Environmental Resource/Surface Water Management Permit Annual Status Report for Surface Water Management
system		Construction
0970	8-95	Applicant Transmittal Form for Requested Additional Information
0971	8-95	Joint Application for Environmental Resource Permit/Authorization to Use State Owned Submerged Lands/Federal Dredge and Fill Permit
0972	8-95	Petition for a Formal Wetland and Surface Water Determination
0973	8-95	Above Ground Impoundment Inspection/Certification Report

0974 8-95 Notice of Intent to Construct a Minor Silvicultural System

0980 8-95 Notice of Intent to Use a Noticed General Environmental Resource Permit

(2) The forms and instructions listed in subsection (1) are available without cost from the following District Service Centers upon request:

(a) Big Pine Key Service Center, Marshall Building, Unit 9, Route 5 Box 183-H, Big Pine Key, FL 33043;

(b) Ft. Myers Service Center, Key West Professional Center, 1342 Colonial Blvd., Suite 81, Ft. Myers, FL 33907;

(c) Okeechobee Service Center, 305 East North Park Street, Suite A, Okeechobee, FL 349973-2033;

(d) Orlando Service Center, Lake Eleanor Center, 1756 Orlando Central Parkway, Orlando, FL 32809;

(e) Miami Service Center, Kendar Building, 1550 Mandruga Avenue, Suite 412, Coral Gables, FL 33146;

(f) Naples Service Center, 6167 Janes Lane, Naples, FL 33942; and

(g) West Palm Beach Service Center, 3301 Gun Club Road, West Palm Beach, FL 33406.

Specific Authority 120.53, 373.044, 373.113 FS.

Law Implemented 120.53, 373.113 FS.

History — New 9-3-81, Amended 12-1-82, 3-9-83, Formerly 16K-1.90, Amended 7-26-87, 11-21-89, 1-4-93, Formerly 40E-1.901, Amended 5-11-93, 4-20-94, 10-3-95.

PART VII COMPLIANCE AND ENFORCEMENT

40E-1.701 — Interagency Agreements.

Specific Authority 120.54(8), 373.044, 373.046, 373.113, 373.171, 373.414 FS.

Law Implemented 120.54(8), 373.046, 373.403, 373.413, 373.414, 373.416, 373.429 FS.

History — New 11-15-92, Amended 1-23-94, Repealed 10-3-95.

40E-1.702 — Environmental Resource, Surface Water Management Permit and Consumptive Use Enforcement Guidelines.

The District's Environmental Resource, Consumptive Use and Surface Water Management Permit enforcement program is implemented through guidelines concerning Resource Protection, Dispute Resolution and Penalty Assessments.

(1) The Resource Protection guideline provides that:

(a) adverse impacts to water resources shall be recovered by requiring complete restoration; or

(b) in those cases where restoration of the adverse impact is not environmentally feasible, the District shall require mitigation to offset such impacts.

(2) The Dispute Resolution guideline provides that:

(a) if the violation cannot be resolved in a negotiated, pro-active manner, it is the District's policy to seek full compliance with District permits and rules through appropriate legal action; and

(b) violations can most effectively be prevented through educating the public about District permitting practices and criteria.

(3) The Penalty Assessment guideline provides that:

(a) the District shall provide for prompt resolution of enforcement matters in a manner that best protects the public interest and water resources; and

(b) the District shall ensure that violators do not gain an economic advantage over competitors by circumventing District permitting requirements. Enforcement action shall be designed to remove any economic advantage resulting from the failure to comply with District permits and rules.

Specific Authority 120.53(1), 373.044, 373.113 FS.

Law Implemented 120.62, 120.69, 373.083(2), 373.119, 373.129, 373.136, 373.430, 373.433, 373.603 FS.

History — New 10-3-95, Amended 7-2-98.

40E-1.705 — Administrative Enforcement Action.

(1) Administrative enforcement action shall be taken whenever the Executive Director of the District determines or has reason to believe that a violation of the provisions of Chapter 373, F.S., or any regulation promulgated thereunder, or permit or order issued pursuant thereto, has occurred, is occurring or is about to occur.

(2) The final order shall constitute final agency action which shall be enforceable pursuant to Sections 373.119, 373.129, 373.136, 373.433, 373.603 and 120.69, F.S., provided however, that when the alleged violator fails to exhaust administrative remedies in accordance with the provisions of this section, all findings of fact and conclusions of law contained in the order shall be deemed uncontested and true and shall become final and binding upon the respondent in any further judicial proceedings. In such event the final order shall not be subject to judicial review regarding those matters which might have been raised in a Chapter 120, F.S., administrative hearing.

(3) Notwithstanding or in lieu of any administrative enforcement action taken pursuant to this section, the Executive Director may pursue appropriate judicial remedies pursuant to Chapter 373, F.S., and other applicable statutes.

Specific Authority 120.53, 373.044, 373.113 FS.

Law Implemented 120.53(1)(b), (c), 120.60(2), 120.68, 120.69, 373.119, 373.129, 373.136, 373.209, 373.433, 373.603 FS.

History — New 9-3-81, Amended 5-11-93, Formerly 40E-1.612, Amended 10-3-95, 7-2-98.

40E-1.711 — Orders of Corrective Action and Consent Agreements.

(1) Orders of Corrective Action.

(a) An order of corrective action may accompany and be served with an administrative complaint upon an alleged violator pursuant to Rule 40E-1.705, F.A.C. An order of corrective action shall include a description of remedial action,

with implementation timeframes, and shall, if applicable, set forth any damages, costs of investigation, or other demands that the District is authorized to recover pursuant to Chapter 373 or Chapter 403, F.S. Unless a responsive pleading and request for a Section 120.57, F.S., administrative hearing is filed within fourteen (14) days after service of the order of corrective action, the order for corrective action shall become final and effective, and shall constitute a final adjudication of the matters alleged, subject only to judicial review under Chapters 120 or 373, F.S.

(b) Orders of corrective action, which constitute final agency action, shall be enforceable pursuant to the enforcement provisions in Chapters 373 and 403, F.S.

(2) Consent Agreement.

(a) A consent agreement is final agency action wherein all parties and the District, by negotiation, have arrived at a resolution of alleged violations of law for the purpose of achieving full and expeditious compliance with Chapters 373 and 403, F.S., and District rules promulgated thereunder. A consent agreement, executed by all parties to an enforcement action, shall have the same force and effect as a final order entered by the District after a formal Section 120.57, F.S., administrative hearing, and shall be enforced in like manner.

(b) The resolution of an enforcement action which requires only the payment of civil penalties and costs but no corrective action shall be memorialized by use of a letter agreement. Any other remedial action required, such as mitigation, restoration, or procurement of permits shall be implemented by use of a consent agreement.

(c) Upon execution by the Chair of the Governing Board, or a duly authorized designee, and filing by the District Clerk, a consent agreement shall constitute agency action subject to the provisions of Rule 40E-1.511, F.A.C.

(3) A non-exempt system which is constructed, operated, altered, maintained, removed or abandoned without a permit shall be restored to its pre-violation condition, unless a permit application for such activity is approved by the District. Specific Authority 120.53, 373.044, 373.113 FS.

Law Implemented 373.119, 373.129, 373.136, 373.430, 373.603 FS.

History — New 5-11-93, Formerly 40E-1.614, Amended 10-3-95.

40E-1.715 — Civil Penalty Calculation.

(1) Consistency and equitable treatment are essential elements of the District's enforcement guidelines. Therefore, the District has developed a civil penalty matrix (CPM) for use in calculating appropriate civil penalties in enforcement actions. The CPM is incorporated by reference into this chapter and Chapters 40E-2, 40E-3, 40E-4, 40E-5, 40E-40, 40E-41, 40E-61, 40E-63 and 40E-400, F.A.C.

(2) The CPM is the initial basis for determining the appropriate amount for a particular penalty. The CPM reflects the District's statutory authority under Section 373.129, F.S., to seek civil penalties of up to \$10,000 per day, per violation. The CPM is comprised of two principle components:

(a) the actual or potential harm to the public and the environment that may occur as a result of the violation; and

(b) the extent of deviation from statutory or regulatory requirements.

(3) Because an economic advantage can be derived through avoidance of expenditures necessary to achieve compliance with District permitting rules and regulations, the District shall consider in its assessment of civil penalties any economic benefit which the violator may have gained through noncompliance.

(4) Multiple penalties shall be calculated for every violation which constitutes an independent and substantially distinguishable violation, or when the same person has violated the same requirement in substantially different locations.

(5) Multi-day penalties shall be calculated where daily advantage is being gained by the violator for an ongoing violation, computed by multiplying the original assessment amount by the number of days of noncompliance.

Specific Authority 120.53(1), 373.044, 373.113, 373.333(1) FS.

Law Implemented 120.69, 373.129, 373.209(3), 373.430, 373.603 FS.

History — New 10-3-95.

40E-1.721 — Complaints, District Investigations, Probable Cause Determinations and Notices of Violations.

(1) Any person may file a written complaint with the District alleging that a person is in violation of any of the provisions of Chapter 373, F.S., or provisions of Chapter 403, F.S., for which authority has been delegated to the District, or the rules promulgated thereunder or an order issued pursuant thereto. Any person may file a written complaint alleging that a lawfully issued District permit is causing a public or private nuisance. District investigations and probable cause determinations preliminary to District action are not subject to the provisions of Section 120.57, F.S., or the rules in this part promulgated thereunder.

(2) The complaint shall specify to the best of complainant's knowledge the identity of the alleged violator, the location and nature of the alleged violation, and any additional information deemed relevant or material by the complainant. The complaint must be signed by the complainant or the complainant's agent and contain an address or phone number where the complainant can be reached. The District shall request that the complainant to furnish any additional information reasonably necessary to aid in investigating the complaint.

(3) Upon receipt of a complaint filed pursuant to this section, the District shall conduct an investigation and make a determination of probable cause. Nothing in this rule shall preclude the District from conducting investigations and probable cause determinations as otherwise authorized or required by law.

(4) An investigation or determination of probable cause is a non-adversary executive function to discover or procure evidence as part of the fact finding function of the District. The District need not have an administrative complaint pending to conduct an investigation or make such a determination.

(5) Upon receipt of a field inspection or investigation report and upon a finding of probable cause, District staff are authorized to issue a Notice of Violation providing instructions for compliance with Chapter 373, F.S., and all applicable

District rules. Nothing in this rule shall preclude the District from seeking injunctive relief or filing any other action that is authorized by Chapter 373, F.S. Specific Authority 120.53(1), 120.54(10), 373.044, 373.113 FS.

Law Implemented 120.53(1), 120.57(4), 373.219(2), 373.229(2), 373.333(2), 373.429 FS.

History — New 9-3-81, Formerly 16K-1.09, 16K-2.03(3), Amended 5-11-93, Formerly 40E-1.510, Amended 10-3-95.

40E-1.901 — Forms and Instructions.

Specific Authority 373.044, 373.113 FS.

Law Implemented 20.52(14), 120.53, 120.53(1)(b), 120.55(1)(a) FS.

History — New 9-3-81, Amended 12-1-82, 3-9-83, Formerly 16K-1.90, Amended 7-26-87, 11-21-89, Transferred to 40E-1.659.